1951

File No. Tenancy II

Legal Deptt. 51 (N)

B BRANCH

Subject:— Notifications under the Bombay Tenancy and Agricultural Lands Act, 1948

P-23
E

(For subsequent pps. pl. see Part II)

File No. Tenancy II/51(N)

pt I

Gen. 194

158-B
I

Legal Department.

Government can assume management of the estates of the held by landlords under the provisions of Chapter IV of the Bombay Tenancy and Agricultural Lands Act, 1948, when it is satisfied that on account of the neglect of a landlord or disputes between him and his tenants the cultivation of his ~~disputes-between-him-and-his-tena~~ estate has seriously suffered or when it appears to it that it is necessary for the purpose of improving the economic and social conditions of peasants, etc. It appears in this case that there was a practice in the olden days of the late Idar State regime to take the Jagir management after the death of the Jagirdar irrespective of the fact whether the Jagirdar's ~~heri~~ heir was major or minor. But even when such a Jagir was taken under management on account of the death of the Jagirdar it was also the practice of handing over to the legal heir of the deceased Jagirdar after taking 'kabulat' or an agreement in writing from him that he would remain faithful to the parent State. The heir-applicant contends that as the management over his Jagir has been taken according to the practice of the Idar State, the procedure adopted by the Idar State, ~~the-procedure-adopted-by-the~~ authorities for returning the Jagir should also have been followed by the Collector. The Revenue Department has realised that the (Japti) management of the Ankala Jagir taken by the Collector in May 1949 is irregular and now they want to give a legal cover by issuing a notification under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948. The heading of Chapter IV in which section 44 occurs is "Management of Estates held by Land-holders." That would give us an indication that such of the Estates which are held by the landholders can be taken under the management of Government under certain circumstances. The estate is now held not by the Jagirdar but by Government. Consequently,

Consequently, the provisions of Chapter 1 would not be applicable, and the legal cover wanted in this case for continuting the management cannot availed of under section 44 of the Act. Attention in this connection is invited to R.L.A's opinion No. 11964 22nd Aug., 1950 No. 1R 876 Date 28 Sept. 1949.

J.R-D

Additional Secretary to Government.

U. to R.L. No. 1492 , Dated the 24th January , 1951

SSM / 30-6-56.

Legal Department.

The Thakore has complied fully with the Government instructions by giving rights of permanent tenancy to all the tenants in the village of Motirel. It is true that the tenants are not satisfied with the Thakore and insist that the lands should be taken under management and this factor may be taken as evidence of dispute between the Thakore and his tenants. But the Collector ha reported in clear terms that the cultivation of the lands has not suffered. (Vide 'A' on p. 156 ante). As pointed out in L.D. Memo No. 11595, dated 10-10-1949, if an order assuming Management on ground of dispute is challenged then it would be necessary to make an affidavit to the effect that Government is satisfied that there is a dispute between the Thakore and his tenants and the cultivation of lands has suffered. There is also nothing in these papers to indicate that the management should be assumed on other grounds mentioned in section 44 viz., for improving the economic and social conditions of peasants and ensuring full and efficient use of land for agriculture. Moreover, there are no grounds whatsoever for assuming the management of the lands in the village of Kureta. As pointed ut in R.L.A.'s No. 11595, dated 18th October 1949, the entire estate as a whole must be taken under management. Under these circumstances R.D. may reconsider the question of assuming management in this case before the appended drafts are issued. The orders of the a assumption of the management of estates under section 44 of the Bombay Tenancy and Agricultural Lands Act have been already challenged in three

already challedged in-three cases in the High Court.

J.R-D

Secretary to Government.

U.R. to R.D. No. 3188, Dated the 21st Feb., 1951.

Legal Department.

The Darbar of Patdi, has given a detailed reply to the notice served on him. The Collector in his report on page 1 ante does not seem to have made any inquiries on receipt of the reply. Relying on the request made in the application of the two villages that the Patdi estate should be taken under management, the Collector has come to the conclusion that there are disputes between the Darbar on the one hand and the villagers on the other and therefore the management of the Patdi estate should be assumed. There is nothing in these papers to show that on account of the disputes the cultivation of the lands has seriously suffered. If the order of assuming management is challenged it will be difficult to support it in a court of law. The Revenue Department is therefore requested to reconsider the question of assuming management in this case before the appended drafts are issued.

J.R.D.
Secretary to Government.

U.R. to R.D. No. 4057 Dated the 12th March , 1951.

SSM / 30/6/56.

Office of the R.L.A.

The share of Mogar Estate belonging to Thakore Shri Amarsinhji which was once taken under management on the ~~9th~~ 9th September 1949 along with the share of Thakore Natwarsinhji was released from management under G.N. R.D. No. 1151/49 dated the 24th April 1950, on the ground that the conditions mentioned in section 44 of the Act were not satisfied, (vide R.D. note at page 101 and the Collectors's report at page 97). The withdrawal of management by Government was much resentd by the tenants of Thakore and thereafter they began to make applications to Government. The main gounds for complaint are-

(i) that the Thakore is recovering half share instead of 1/3 share from his tenants in contraventi on of ~~lands-in-~~ the Act,

(ii) that the Thakore has increased the rents of lands in the year 1947,

(iii) that he has transferred certain lands as a Jiwai on the names of his sons and daughters,

(iv) that he has recovered one-half share of the proceeds of Chara land and the expenses ~~for~~ for the improvement of the land were not paid as agreed to by him,

(V) that he has recovered amounts by way of haq from his tenants.

The Collector in paragraph 4 of the report at page 203 ante has summarised briefly the result of the inquiry made into the complaints and has dealt with the legal position between the Thakore and his tenants. Broadly speaking the tenants have a grievance that Thakore is not observing the provisions of the Bombay Tenancy and Agricultural

Agrucultural Lands Act. However, it also appear from the repont of the Collector that the remedies open to the tenants under the Act have not been availed of by them but that instead they desire that the Government should take under manggement the estate of the Thakore under section 44.

The complaint has been made that the Thakore has increased rent in the years 1947 and 1948, and that he had demanded and recovered 1/2 share of crops instead of 1/3 from his tenants from the year 1947 onward. The obligation upon a person not to recover rent in exces of the maximum specified in section 6 was created for the first time by the Bombay Tenancy and Agricultural Lands Ands Act, 1948, and no increase of rent whether in cash or kind made before the Act came into force could be validly challenged. The only consequency of the Act of 1948 is that if the rent is in excess of one fourth in the case of an irrigated land and in excess of one third in the case of any other land of the crop of such land or its value, such increase has to be refunded under section 10 of the Act. But the Ac t is not retro spective in effect and would not affect anything done before the Act came into force. As regards this increase of rent in the past the Collector in his report dated 29th December 1949 at p. 97 states as follows:-

"The annual rent charged by the Thakore varies from Rs. 3-13-0 to R. 50/- per acre. The annual rent of lands situated in neighbouring villages of of Vaghasi, Ramnol, Bedwa, Ramnagar and Vodod range from R. 50/- to Rs. 106/-".

It is further stated that the rent now complained of was being recovered during the management of the estate under section 44 of the Act.

As regards the point that the Thakore has transferred certain lands as a Jiwai on the names of his sons and daughters, it may be pointed out that there is no provision in the act which makes such action illegal. The question whether by such devices the landholder will be able to evade the fifty acres rule will have to be considered when that question arises. It would not be a sufficient ground for taking action under section 44.

As regards the complaint that the Thakore has recovered certain amount by way of haq, the Thakore can be punished under section 81 read with section 11 of the Act, section 11 having prohibited the levy of any cess, rate, vero, haq from any tenant in respect of any land held by him.

In view of the legal position stated above and in view of the fact that section 44 of the Act has been recently challenged on the ground that it is inconsistent with the provision of article 19 of the Constitution, Revenue Department may reconsider the question of assuming management in this case.

Sd/ J.R. Dhurandhar
24/3

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4757 dated the 26th March 1951.

hsp/4/7

L.D.R.I. No. 7467 Dt. 13-4-51.

Submitted with reference to the R.D. note at p. 25 ante.

2. The proposal is to assume management of the estates in the village of Bakrana of Sanand Mahal in the District of Ahmedabad by Govt. under sec. 44 of the Bombay Tenancy and Agricultural Lands Act, 1948.

3. Under sec. 44 of the Act for assuming the management of a land holder's estate, the State Govt. must be satisfied that on account of neglect of a landholder or disputes between him and his tenants the cultivation of his estate has seriously suffered or when it appears to the State Govt. that it is necessary to do so for the purpose of improving the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture.

The first para. of the Collr's letter at p. 23 reads that "As a result of ..... but as there are constant and long standing disputes regarding crop share etc. the economic and social conditions of the peasants have seriously suffered. So the management can be taken under sec. 44 of the Act.

Moreover the Collr. in para. 4 of his letter at p. 23 has stated that the estate holders are talukadars; hence talukdars come in the definition of 'Landholder' as given in sec. 2(9) of the Act.

4. The draft notification as slightly amended is in order.

2d/-

The proposal is to assume management of the estates of certain Talukadars of Bakrana in Sanand mahal of Ahmedanad District. The Collr. In his letter at page ~~we~~ 23 states that the dispute between the tenents and the Talukdars are long standing and constant regarding crop share. The cultivation of the estates must, therefore, have necessarily suffered by these disputes. The Collr. also states that the Social and economic condition of the peasants has suffered. There are sufficient reasons for assuming management of the estate under sec. 44 of the B.T. & Agri. L. Act, 1948. The draft notification is, therefore accordingly revised and a revised draft notification is sent herewith. As the landholders are Talukdars it is not necessary to declare them as such under Sec. 2(9).

Sd/-

A revised draft notification is sent herewith

2. In the last entry at p. 30 the names of landholders who are joint landholder and the particulars of survey members held jointly by them should be shown separately unless all are held jointly.

Sd/-

Sd/K.P.D.

URW-R.D.No. 6705 dt. 26-4-51

Office of the R.L.A.

The revenue Department draft notification at page 641 ante is not in order. The notification in fact directs that the limits of 50 acres and 200 acres specified in sections 32 and 34 of the said Act shall be* reduced ~~59-12~~ to 12½ acres in respect of paddy land or Bagayat land or both.

2. Under sub-section (1) of section 36 of the Bombay Tenancy and Agricultural Lands Act 1948, the State Government has been empowered to reduce the limit specified in section 32 or 34 for the purposes of any area specified in the notification. The word "any" used in that sub-section would not include all areas in the State of Bombay. The power in that sub-section is restricted to reducing the limit only in such area as the State Government, having regard to the peculiar circumstances of the area, thinks it fit to reduce.

3. Secondly, under sub-section (2) of section 36 of the said Act the State Government is empowered to direct that the limits of 50 acres and 200 acres specified in section 32 of 34 X X X X X X shall comprise of such kind or kinds of lands in the area as may be specified in the notification. The power to specify the kind or kinds of lands would not cover the power to reduce the total limit of 50 acres and 200 acres specified in the Act. Sub-section (2) of section 36 of the Act contemplates that where the areas of any particular kind of land is reduced, the area of other kinds of land should correspondingly increases so as not to disturb the limits of 50 acres and 200 acres specified in the Act. Under the Revenue Department Notification, in the case of paddy land or Bagayat land or both the total acreage of 50 acres has been reduced to 12½ acres. Unless, therefore the power is specifically given by the Legislature, it is not legally feasible by means of the subordinate legislation to reduce the area which has been approved by the Legislature.

J. R. D.
Remembrancer of Legal Affairs.

U. H. to R.D. NO. 7774, dated 17th may 1951.

Office of the R.L.A.

Action under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948 can only be taken where there is ~~prefte~~ proof for Government to come to the conclusion that on account of the neglect of a land-holder or disputes between him and his tenants, the cultivation of his estates has seriously suffered. From the Collecor's report dated 16th November 1950 at pages 11 and 12 ante and dated 9th March 1951 at pate 27 ante no reference is made ~~et~~ to the fact that on account of the disputes between the land-holders and the tenants the cultivation of the land has suffered. It will not, therefore, be legal to issue the proposed n tification unless the above fact has been ascertained.

2. A revised draft notification is, however, sent herewith and it may issue on ascertaining the facts stated above.

J R D.
Remembrancer of Legal Affairs.

U.R. to R.L. No. 8114, Dated the 23rd May 1951.

Legal Department.

Action under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948, can only be taken where there is proof for Government to come to the conclusion that on account of the neglect of a land-holder or disputes between him and his tenants, the cultivation of his estates has seriously suffered. From the Collector's reports dated the 1st November 1950 at pate 11 ante and dated the 8th March 1951 at page 49 ante no reference is made to the fact that on account of the disputes between the land-holders and the tenants the cultivation of the land has suffered. It will not, therefore, be legal to issue the proposed notificati on unless the above fact has been ascertained.

2. Two revised draft notifications are, however, sent herewith and they may issue chly on ascertaining the facts stated above.

J.R.D.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 8538, Dated the 31st May 1951.

Legal Department.

Thnse revised draft notification in place of the R;D. draft at page 657 are sent hsnewith.

2. The intention of the Revenue Department is to reduce the limits only of paddy or bagayat lands or both in certain areas to 12½ acres and 50 acres, as the case may be. Such a notification can be issued under sub-section (1) of section 36 of the Act. It would not, however, affect lands which comprise of paddy as or bagyat lands and and other kinds of lands. In respect of such mixed lands it will be necessary to issue another notification under sub-section (2) of section 36 of the Act. The effect of the first notification would be that where a landlord or tenant owns wholly jurayat or varkas lands he would continue to be governed by the existing limits of 50 acres and 200 acres respectively. The effect of the second notification would be that where a landlord or tenant owns mixed lands comprising of paddy (or bagayat) lands and jurayat (or varkas) lands his power to possess or purchase only paddy (or bagayat) land is limited to 12½ acres and 50 acres respectively. As regards the other kinds of land he would be entitled to own such additional lands as would be sufficient to make up the area of the land owned by him to the extent of 50 acres and 200 acres, as the case may be.

3. The circular at page 639 will have to be amended.

4. A separate notification cancelling Government Notification, Revenue Dapartment No. 1109/49, dated the 30th January1951 would be desirable and

be desirable and a draft of such notification is sent herewith.

J.R.D.

Secretary to Government.

U.R. to R.D. No. 10940 , Dated the11th July 1951.

Office of the R.L.A.

This is a proposal for assuming management of the estate of the Thakore of Bhilodia under section 44 of the Bombay Tenancy and Agricultural Lands Act. The R.D. has to the R.L.A. for scrutiny two draft notifications one at p. 43 ante and the other at p. 47 ante.

2. In the draft notification at p. 47 ante is proposed to assume the management of the estate on the ground that there are disputes between the Tahkore and his tenants and on account of such disputes, the cultivation of the land has seriously suffered.

3. The proposal is based on the recommendation of the Collector of Baroda. The Collector in his letter at pp. 25 to 27 states that there are disputes between the Thakore and his tenants and as there is not security of tenure, cultivation has naturally suffered and one survey nember has remained uncultivated. With regard to the said statement of the Collector, the R.D. in it s note at p. 35 holds a view that the Collector has not properly scrutinised the proposal and that it cannot be held that the cultivation has seriously suffered. The R.D. in its note at pp. 35-36 states that under section 44 of the Bombay Tenancy and Agricultural Lands Act, the management of an estate can be assumed if either of the following two conditions is satisfied:-

(a) if on account of the dpsputes between the landholder and his tenants, the cultivation of the estate has seriously suffered,

or

(b) if Government considers it necessary for the purpose of improving the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture to assume management of the estate.

R.D. in its note at p. 35-36 has come to the conclusion that condition (a) above is not satisfied in the present case but that condition (b) would apply to the present case.

4. The draft notification at p. 47, however, is not in accordance with the decision arrived at by R.D. It is proposed therein to assume management on the ground that the cultivation has seriously suffered onaccount of the disputes between the landlord and his tenants. The R.L.A. in his opinions No. 8114 dated 23-5-51 and No. 8538 dated 31-5-51 has held that action under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948, can only be taken where there is proof for Government to come to the conclusion that on account of the neglect of a landholder or disputes between him and his tenents, the cultivation of his estate has seriously suffered. In the circumstances, the management ban be assumed in the present case if there is proof to show that the cultivation has seriously suffered.

5. The R.D. draft notifications at pp. 43 and 47 have, however, been scrutinised. The draft notification at p. 43 as slightly amended is in order. In place of draft notification at p. 47 a revised draft notification is sent herewith. The ground, namely, ensuring the full and efficient use of land for agriculture has been added in the revised draft notification as it can

as it can be safely taken in addition when the cultivation is proved to have seriously suffered. The two draft notifications may issue on ascertaining the fact that the cultivations has seriously suffered.

Remembrancer of the Legal Affairs.

U.R. to R.D. No. 13416, Dated the 22nd Aug., 1951.

SSM / 2/7/56.

Office of the R.L.A.

It is proposed in these papers to assume, under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948, the management of two Jaghirs viz. Lapur and Varthli in the Sabarkantha District for the purpose of improving the economic and social conditions of peasants and ensuring the full and efficient use of land for agruculture.

The Collector of Sabarkantha in his report at p. 33 ante has, as regards the first Jaghir, stated that the Sheshandar is charging certain unlawful taxes and that in place of Uddhad Vighoti levied so far he has introduced Kaltar system and that it is necessary in order to improve the social and economic conditions of the peasants to assume management of this village under section 44 of the Bombay Tenancy and Agricultural Lands Act. While as regards the second Jaghir the Collector has stated that it is complained by the people that the Thakore Saheb has snatched away some land from certain tenants and that while doing Kaltar of the fields he estimated the probable out turn of grains higher than the real quantity and in this way the social and economic condition of the Kheduts is seriously affected. There is no reference, however, in his above report to the fact that on account of the disputes between the landholders and tenants the cultivation of the land has suffered. He does not also refer to this fact in the draft notification forwareded by him. It will not, therefore, be legal to issue the proposed notification only on the ground stated by the Collector. Before any notification under section 44 is issued a report from the Collector in terms of section 44 of the Bombay Tenancy and Agricultural Lands Act is necessary.

J.R.J.

Remembrancer of Legal Affairs.

U.R. to R.D. No.16408, dated the 16th Oct., 1951.

Office of the R.L.A.

In sub-para. (1) of the Collector's report at pages 23-29 it is stated that formerly the people used to bring fire-wood free of charge but now the Thakore Sahib asks for money and thus harasses the people, while in sub-para. (2) it is stated that the land in which formerly the cattle of the village grazed has now been transferred by the Thakore Sahib in his own name and at 'A' on page ~~28~~ 27 ante it is stated that the cultivators of this Jagir have not paid land revenue since last three years and they request that they willpay the dues to Government.

/ None of the above grounds is sufficient to justify the assumption of management by Government under section ~~45~~ of the Bombay Tenancy and Agricultural Lands Act, ~~20~~ 1948.

As already held by the R.L.A. in previous cases (vide R.L.A's opinion No. ~~8225~~ 8114 dated 23-5-1951, No. 8538 dated 31-5-1951 and No. 13416 dated 22-8-1951), action under section ~~55~~ 44 of the Bombay Tenancy and Agricultural ~~Area~~ Lands Act, ~~295~~ 1948 can only be taken where there is proof for Government to come to the conclusion that on account of the neglect of a landholder or disputes between him and his tenants, the cultivation of his estate has seriously suffered. There is no reference whatsoever in the Collector's report to the effect that on account of the disputes between the landholder and his tenants the cultivation of the land has suffered. Neither in the draft notifications forwarded by him has he made any reference to this fact. It will not, therefore, be legal to issue the proposed notifications unless that fact has been ascertained.

J R D.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 16390, Dated the 16th Octo., ~~2952~~ 1951.

SSM / 2/7/56,